

provocative theoretical counterpoint that bridges micro to macro levels, from lived biography to structural dynamic. *Lives of Lawyers* is a must-read for scholars and students of professional ethics, as well as all those interested in understanding the central role of organizations in the changing contours of the legal profession.

References

- Abbott, Andrew (1988) *The System of the Professions: An Essay on the Division of Expert Labor*. Chicago: Univ. of Chicago Press.
- Kelly, Michael (1994) *Lives of Lawyers: Journeys in the Organization of Practice*. Ann Arbor: Univ. of Michigan Press.
- Kronman, Anthony T. (1993) *The Lost Lawyer: Failing Ideals of the Legal Profession*. Cambridge, MA: Belknap Press.
- Larson, Magali Sarfatti (1977) *The Rise of Professionalism: A Sociological Analysis*. Berkeley: Univ. of California Press.
- Lazega, Emmanuel (2001) *The Collegial Phenomenon: The Social Mechanisms of Cooperation Among Peers in a Corporate Law Partnership*. New York: Oxford Univ. Press.

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The Hollow Hope: Can Courts Bring About Social Change? 2d ed. By Gerald Rosenberg. Chicago: University of Chicago Press, 2008. Pp. 534. \$20.00 paper.

Reviewed by Matthew Hall, Saint Louis University

In the first edition of *The Hollow Hope*, Rosenberg persuasively argued that “U.S. courts can almost never be effective producers of significant social reform” (1991:422). His project attracted widespread attention and became a staple of classroom discourse concerning the interaction between courts and society. In his second edition, Rosenberg expands his analysis by examining the decisions of state courts of last resort in Hawaii, Vermont, and Massachusetts, which ruled that the denial of marriage benefits to same-sex couples violated their respective state constitutions. Rosenberg explores the direct and indirect effects of these rulings, as well as the countermobilization they prompted, and concludes that “litigation as a means of obtaining the right to same-sex marriage has not succeeded” (p. 415). Like his previous work, Rosenberg pursues this investigation through a compelling narrative, incorporating a wealth of data, investigating a variety of potential causal paths, and thoughtfully countering potential objections with compelling logic. This second edition, like his first, will undoubtedly warrant considerable notice from scholars in the fields of law, judicial politics, and sociolegal studies.

Nonetheless, Rosenberg’s study of same-sex marriage highlights a conceptual problem that plagues his entire project: shifting definitions of success and failure. At various points, Rosenberg

describes litigation as failing if courts lack the will to support reform (p. 285), courts lack the power to implement reform (p. 52), legislatures fail to enact subsequent social reform (p. 293), or court decisions cause legislative backlash or are reversed through constitutional amendment (pp. 344, 416). But these obstacles to successful reform involve completely different political and institutional dynamics. Judicial will is a function of the appointment process and judicial decisionmaking. Judicial implementation is a function of the institutional relationships between courts, executives, legislatures, and bureaucrats. The enactment of subsequent legislation and reversal through constitutional amendment are both functions of electoral politics and the legislative process.

By treating these various political dynamics as interchangeable examples of litigation failure, Rosenberg shifts the meaning of success in different cases to support his thesis. For example, in his analysis of same-sex marriage he laments the U.S. Supreme Court's unwillingness to issue an "equivalent to *Loving v. Virginia*" to protect same-sex marriage. The Hawaii Supreme Court was willing to issue such a ruling, but this ruling was reversed through constitutional amendment; hence, this litigation also failed. A similar ruling in Massachusetts was not reversed, and "the judiciary's lack of implementation [did] not come into play" (p. 350), so Rosenberg shifts the standard for success once again. Rather than limit his study of the Massachusetts ruling to effects in Massachusetts (as he limited his study of U.S. Supreme Court rulings to effects in the United States), he claims that same-sex litigation was "an attempt to use the courts to produce policy change with nationwide impact" (p. 340); in other words, he redefines success to mean the subsequent adoption of legislative reform throughout the entire country. He concludes that this litigation did not succeed because these three cases directly or indirectly extended state marriage benefits to same-sex couples in only eight states and did not secure the extension of federal marriage benefits (p. 415). His thesis becomes unable to be falsified because any time he finds success, he raises the bar for what success means.

Rosenberg may argue that the distinction between these various modes of failure matter little to the proponents of social reform; if most litigation strategies fail, it does not matter how they fail. Whether rulings are reversed, ignored, or never issued in the first place, reformers would be better advised not to pursue a litigation strategy. But this perspective neglects many practical insights into the role of courts in society. First, the shifting standard of success tends to obscure the very real changes caused by courts, such as same-sex marriage in Massachusetts. Second, the judicial will standard confuses the difference between what courts want to do and what they can do. Third, Rosenberg's conclusion discourages reformers from

pursuing a court-centered approach in situations when litigation may well be the best route to success. For example, if advocates of same-sex marriage were able to obtain a favorable ruling from the U.S. Supreme Court, then there is little reason to believe their efforts would be in vain; no subsequent legislation would be necessary, a constitutional amendment would be extremely difficult to pass, and implementation concerns would not “come into play” (p. 350). It may be difficult to convince the justices to support reform, but it would also be difficult to convince legislators.

In spite of these concerns, *The Hollow Hope* remains the premier social scientific inquiry into the power of courts in American society. Although the first edition drew considerable interest regarding the role of courts in creating public policy, few subsequent studies have matched its thoroughness or prominence. This second edition will contribute to and, hopefully, encourage the continued study of courts as agents of social change.

Reference

Rosenberg, Gerald (1991) *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: Univ. of Chicago Press.

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Friends of the Supreme Court: Interest Groups and Judicial Decision Making. By Paul M. Collins Jr. New York: Oxford University Press, 2008. Pp. xiii+234. \$75.00 cloth.

Reviewed by Udi Sommer, University at Albany: SUNY

In a democracy, constituencies hold their representatives accountable by mapping performance onto reelection. However, the democratic input into the federal judiciary is limited. Justices of the U.S. Supreme Court, for instance, are commonly perceived as largely unaffected by the ebb and flow of politics. Still, in a thought-provoking and masterfully written volume, Collins challenges this perception of judicial decisionmaking. In his account, democratic input into the judicial arena exists. It is fostered through the activity of interest groups as *amicus curiae* (Latin for “friends of the court”). In *Friends of the Supreme Court: Interest Groups and Judicial Decision Making*, Collins demonstrates how popular interests are brought to bear on decisionmaking in the highest court of the land.

However, before delving into an examination of the various ways in which amici influence decisionmaking, Collins evaluates a critical issue for the democratic question. What if groups filing amicus briefs are predominantly of one ideological persuasion or if, as is the case in the other branches of government, they speak chiefly